

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

Elroy Clay,

Plaintiff,

Case No. 12-cv-10140

v.

Honorable Sean F. Cox  
United States District Court Judge

Charles Coy, et al.

Defendants.

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**OPINION AND ORDER**  
**DENYING PLAINTIFF ELROY CLAY'S OBJECTIONS TO THE R&R [DOCKET**  
**ENTRY NO. 24] AND ADOPTING THE R&R**

Plaintiff Elroy D. Clay, a prison inmate in the custody of the Michigan Department of Corrections, filed a *pro se* civil complaint under 18 U.S.C. § 1983, alleging that various corrections officers used excessive force on him while he was seated and in shackles in violation of the Eighth Amendment. Clay further contends that, in an effort to cover up their actions, the correction officers later wrote false misconduct reports accusing him of assault.

This matter was referred to Magistrate Judge R. Steven Whalen. (Docket Entry No. 7.) The parties filed cross-motions for summary judgment. (Docket Entry Nos. 12, 16.)

On February 25, 2013, Magistrate Judge Whalen filed his report and recommendation ("the R&R"), which recommended denying both motions. (Docket Entry No. 19.)

On March 8, 2013, Clay filed a Motion for Extension of Time to File Objections. (Docket Entry No. 20.)

On March 14, 2013, the Court denied that motion. (Docket Entry No. 23.) The Court further ordered Clay to file his objections to the R&R by **5:00 p.m. on Tuesday, March 19, 2013.**

On March 25, 2013, Clay untimely filed his objections, which is six (6) days after the March 19, 2013, deadline set by the Court and twenty eight (28) days after Magistrate Judge Whalen filed his R&R. In “Plaintiff’s Objection to the Report and Recommendation,” Clay basically recounts the facts of this action as he perceives them, asserts that the Defendants have engaged in a “conspiracy” to assault and batter him, and then ultimately concludes that “[t]his issue should be up to the Jury to decide.” (Docket Entry No. 24.)

The Court finds that the issues have been adequately presented in the parties’ briefs and that oral argument would not significantly aid the decision making process. *See* Local Rule 7.1(f)(2), U.S. District Court, Eastern District of Michigan. The Court therefore orders that the motion will be decided on the briefs.

Magistrate Judge Whalen has already considered Clay’s statement of facts in the R&R. Clay’s objections is basically a restatement of the facts as Clay perceives them. Magistrate Judge Whalen recommends denying Clay’s and the Defendants’ motions for summary judgment because there is a genuine issue of material fact with regard to many of the facts that Clay recites in his objections. After reviewing the R&R, the briefs, and the documents submitted by the parties, the Court is satisfied with Magistrate Judge Whalen’s recommendations.

**IT IS ORDERED** that “Plaintiff’s Objection to the Report and Recommendation” [Docket Entry No. 24] is **DENIED**;

**IT IS FURTHER ORDERED** that the Court **ADOPTS** the February 25, 2013, Report and Recommendation [Docket No. 19];

**IT IS FURTHER ORDERED** that Docket Entry No. 12 and Docket Entry No. 16 are  
**DENIED.**

**IT IS SO ORDERED.**

Dated: March 26, 2013

s/ Sean F. Cox  
Sean F. Cox  
U. S. District Court Judge

I hereby certify that on March 26, 2013, the foregoing document was served upon counsel of record by electronic means and upon Elroy Clay by First Class Mail at the address below:

Elroy Clay #258184  
Richard A. Handlon Correctional Facility  
1728 Bluewater Highway  
Ionia, MI 48846

Dated: March 26, 2013

s/ J. McCoy  
Case Manager